ARLEY TAYLOR

IBLA 84-217 Decided February 25, 1986

Appeal from separate decisions of the Anchorage District Office, Bureau of Land Management, declaring two placer mining claims abandoned and void for failure to file affidavits of assessment work and rejecting in part the recordation of three other placer claims because they extend onto patented land. F-52400 through F-52402, F-52405, and F-52406.

Affirmed as modified.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim

   Instruments required to be filed with BLM by 43 U.S.C. § 1744(a) (1982), must identify the claim or claims for which they are filed by giving the correct claim name, the correct BLM assigned claim number, or a description of each claim sufficient to locate it on the ground.
2. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Recordation

   The statutes and regulations governing the description of a mining claim given in a location certificate filed for recordation with BLM do not require that the locator submit information sufficiently accurate for BLM to determine the precise position of the claim on a township plat. Rather, the proper test is whether the claim may, in fact, be found and identified on the ground by following the information in the recorded description.

APPEARANCES: Arley Taylor, pro se.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Arley Taylor has appealed from two decisions of the Anchorage District Office, Bureau of Land Management (BLM), dated November 4, 1983, and sent to him under the same cover. Because the decisions concern different claims, different issues, and different administrative actions, they will be considered separately.

The first decision concerns two placer claims denominated in their location notices as the Upper Discovery #8 and Upper Discovery #9 and serialized by BLM as F-52405 and F-52406. They were located June 15, 1962, as part of a series of claims appellant holds along Eureka Creek, and are two of numerous claims located by him in that general area. Copies of the claims' location notices were filed with BLM on June 8, 1979, thus complying with the requirements of section 314(b) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(b) (1982).

The BLM decision declared the two claims to be abandoned and void for failure to file affidavits of assessment work or notices of intent to hold either prior to October 22, 1979, or within calendar year 1980, as required by section 314(a) of FLPMA, 43 U.S.C. § 1744(a) (1982). In response, appellant has submitted copies of affidavits of assessment work for 1979 and 1980 which he filed with BLM and which he asserts include the locations declared abandoned by BLM. Each affidavit lists numerous claims, presumably all held by appellant. The descriptions which appellant believes include the claims in question have been underlined by him. Thus, the issue on appeal is whether the claims declared abandoned are included among those listed in the affidavits which he timely filed.

[1] Section 314(a) of FLPMA requires that the copy of an affidavit of assessment work filed with BLM give "a description of the location of the mining claim sufficient to locate the claimed lands on the ground." 43 U.S.C. § 1744(a)(2) (1982). BLM regulations have required that the claim number assigned by the agency be included in the filing, see 42 FR 5298, 5302 (Jan. 27, 1977), and since 1979 have permitted this number to substitute for the required statutory description, 44 FR 9720, 9723 (Feb. 14, 1979), now 43 CFR 3833.2-2(a)(1). In Philip Brandl, 54 IBLA 343, 344 (1981), this Board, in effect, expanded the types of information that are acceptable by including "the proper identification of the claim by name" as an alternative to submitting the number assigned by BLM.

The portions of the assessment affidavits underlined by appellant each state, with slight stylistic differences: "Eureka Creek Placer Claims 20 acre Claims F 52407 & F 52398 thru F 52404 -- 10 claims." It is clear that this description contains neither the proper names of the claims in question nor their assigned BLM numbers. Nor do the affidavits contain any further description of the claims by which they might be identified. Finally, as we have previously noted in another case involving claims listed in the same 1980 affidavit, the indication that 10 claims are included cannot be given any weight because of the consistent pattern of inaccuracies in the totals given for the claims listed. See Arley R. Taylor, 86 IBLA 283 (1985). Since the affidavits of assessment work failed to contain any information by which BLM might have reasonably identified the Upper Discovery #8 and the Upper Discovery #9 as included among the listed claims, we affirm its determination that the Upper Discovery #8 and the Upper Discovery #9 must be deemed abandoned and void. See Peter Laczay, 65 IBLA 291 (1982).

[2] The second decision sent to appellant by BLM "rejected in part" three placer claims, the Eureka Creek Nos. 3, 4, and 5, and "declared null and void in part" their recordation on the grounds that they overlapped previously patented land over which the Department of the Interior no longer had

jurisdiction. These claims were located in June and July of 1958 and were filed with BLM on June 8, 1979, as required by section 314(b) of FLPMA, 43 U.S.C. § 1744(b) (1982). In relevant part, BLM's decision stated:

> On July 6, 1914, a patent (PA411892) was issued by the Department of the Interior to Peterson, August, Quigley, and Lloyd for Mineral Survey 360, in which a portion of the Eureka #3, #4, and #5 placer mining claims lie. Therefore, portions of the subject mining claims are located within areas that are no longer under the Interior's jurisdiction.
>
> The effect of the issuance of a legal patent is to transfer legal title from the United States and to remove the land from jurisdiction of the Department of the Interior. Applications for land, title to which has passed from the United States by issuance of a legal patent, must be rejected. Mary A. Aspinwall (On Reconsideration), 66 IBLA 367 (1982).
>
> When the location notices for the claims listed on the attached appendix were filed with BLM on June 8, 1979, the Department of the Interior no longer had jurisdiction over the lands encompassed within portions of the mining claims. Due to the lack of jurisdiction over the subject lands, the claims listed on the attached appendix are rejected in part.

In response to this decision, appellant has submitted a map which, he asserts, shows that his claims do not conflict with the previously patented Silver King and Merry Widow claims. He describes it as "the original survey map." Although this map was apparently printed by either a state or Federal agency as an illustration in a publication, it bears no legend as to its source, nor a date of publication. Additionally, the positions of the appellant's claims and that of the Silver King have been added by hand along with notes as to some geographical features. Consequently, we cannot rely upon this map, except as illustrating appellant's contention that his claims do not conflict with the patented Silver King and Merry Widow lode claims.

From our review of the claim files, it appears that BLM made its determination that portions of the Eureka Creek Nos. 3, 4, and 5 lie on patented land based upon information in appellant's location certificates, the map of the claims submitted by him as required by regulation, see 43 CFR 3833.1-2(b)(5)(ii), and official plats. While our review of the record convinces us that parts of appellant's claims conflict with the Silver King and Merry Widow patent, we are less sanguine with the conclusion of BLM that the claims which conflict are the Eurekas Nos. 3, 4, and 5.

Appellant's map shows his placer claims straddling Eureka Creek. To the extent that his claims extend onto the right bank of the stream, some of them clearly must conflict with the patented claims. Appellant asserts that the Merry Widow lode lies some distance north of the stream and places the Silver King lode approximately 4,000 feet away in a northeasterly direction. In this, appellant is simply wrong.

A review of the patent file for the Merry Widow and Silver King lodes shows conclusively that not only do they share a common endline, but that both were located and surveyed "on the right limit of Eureka Creek." It is clear, therefore, to the extent that some of appellant's claims extend north of the bed of Eureka Creek they necessarily encroach upon these patented lands. What is less clear, however, is which of these claims invade the mineral patent.

By statute, recorded location certificates must contain "a description of the claim or claims located by reference to some natural object or permanent monument as will identify the claim." 30 U.S.C. § 28 (1982). In addition, FLPMA requires that the copy of a location certificate filed with BLM include "a description of the location of the mining claim or mill or tunnel site sufficient to locate the claimed lands on the ground." 43 U.S.C. § 1744(b) (1982). The regulations, combining the language of both statutes, require that the map, narrative description, or sketch submitted with a location certificate "set forth the boundaries and position of the individual claim or site with such accuracy as will permit the authorized officer of the agency administering the lands or mineral interests in such lands to identify and locate the claims or site on the ground." 43 CFR 3833.1-2(b)(5)(ii). 1/

[2] None of the provisions quoted above require a mining claimant to submit to BLM information sufficiently precise for his claim or claims to be projected onto a township plat. When the recording of a location certificate or notice is required or permitted by state law, it serves to give constructive notice of the claim or claims to third parties. 2 American Law of Mining, § 33.09[1][a] (2d ed. 1984). The purpose of requiring that the recorded description refer to a natural object or permanent monument is to give a starting point from which, by following the description, the markings of the claim on the ground may be found. Id. at § 33.09[3]. 2/ This traditional statutory purpose was made explicit in FLPMA's requirement that the description be "sufficient to locate the claimed lands on the ground," and this language is repeated in the regulations. Thus, while the requirement of the regulations "hardly constitutes a change in the statute," Elbert O. Jensen, 39 IBLA 62 (1979), neither the statute nor the regulations requires a precise map or description of the position of the claims. See Floyd and Elsie Patrin, 87 IBLA 152 (1985); Robert H. Lawson, 48 IBLA 93 (1980). Indeed, for most mineral locations, precision could not be achieved without

1/ The regulations originally promulgated under FLPMA required that all claimants submit a map and a narrative or sketch of claims located on unsurveyed land. 42 FR 5298, 5301 (Jan. 27, 1977). The separate requirements were subsequently combined to require either a map which depicts the location or locations or a narrative or sketch. 44 FR 9720, 9722 (Feb. 14, 1979). The regulation was again changed to require a map with a narrative or sketch. 47 FR 56300, 56305 (Dec. 15, 1982).

2/ The relevant Alaska statute reflects the Federal requirement. It requires: "a description of the claim with such reference to some natural object or permanent monument so that an intelligent person with a knowledge of the prominent natural objects and permanent monuments in the vicinity can identify the claim." Alaska Stat. § 27.10.050(5) (1985).

a survey, a step the mining law (30 U.S.C. § 29 (1982)) does not require until an application for patent is made. See generally United States v. Haskins, 59 IBLA 1, 94-95, 88 I.D. 925, 972 (1980); 2 American Law of Mining, § 51.04 (2d ed. 1984). Rather, the test established by statute for the sufficiency of a recorded description is whether the claim may in fact be found and identified by following the recorded description. 2 American Law of Mining, § 33.09[3] (2d ed. 1984).

Because a recorded description and the map filed with BLM are not required to be precise, the uses which may be made of information submitted necessarily depend upon its relative accuracy. In some cases, such as placer claims described by subdivisions of the public land survey, the information will presumably be accurate. In other cases, such as when the description includes references to officially established boundaries or survey lines, including previously surveyed claims, the information may be sufficiently precise to permit a fairly accurate projection of the claim onto an official plat. The instant appeal, however, involves a situation in which the land involved is not surveyed nor are the claims so located as to utilize other officially established boundaries. Thus, while each claim is located adjacent to the next, it would be possible, dependent upon the placement of the first Eureka claim, to move the entire group of claims up or down stream for a substantial distance.

As discussed above, the distances from a natural object or permanent monument given in a location notice or certificate are not intended to be exact. As a practical matter, most frequently they are not measured but are paced off or otherwise estimated by the locator. In the present case, the distances are given from the confluence of Eureka Creek with Moose Creek, a point roughly a mile and a half from the nearest of the claims. 3/ Even if the distances from the confluence stated in the location certificates are fairly accurate, they may have been measured following sinuosities of the river which could alter claim placement considerably. In this regard, the map submitted with the location notice cannot independently serve as a basis for placing the claims on the protracted survey plat as it is not designed to be an exact depiction of the situs of the claims but merely an aid to finding them on the ground. See Floyd and Elsie Patrin, supra. These problems are in addition to the well recognized legal principle that the situs of the claim on the ground as disclosed by its monuments will control over a conflicting description in the notice of location. See United States v.

3/ Appellant's location certificate for the Eureka Creek No. 3 states that it is "located 7660 feet up from mouth of Eureka Creek a tributary of Moose Creek near Kantish Alaska." The location certificate for Eureka Creek No. 4 states that it begins at a post "9030 feet up Eureka above its entry into Moose on the North side of Creek" and extends easterly from the post. The location certificate for Eureka Creek No. 5 describes it as beginning at a post "which is situated 10350 up Eureka above its entry into Moose Creek on the North side of Creek" and extending easterly from that point. The confluence of Eureka Creek and Moose Creek is not in township 16 and, thus, no approximations based on the distances in the location certificates can be made using the plats in the case files.

Kincanon, 13 IBLA 165, 168 (1973); 2 American Law of Mining, § 33.04[9] (2d ed. 1984). Thus, if the monumentation of the subject claims varied from the recorded description, the actual location of the claims could substantially differ from that depicted on appellant's map. In light of these considerations, we are reluctant to even venture a guess as to which claims may encroach upon the patented land. Accordingly, we will modify the decision below to the extent that it specifies the Eureka Nos. 3, 4, and 5 and hold that, to the extent that any of appellant's Eureka claims impinge upon the patented land they are null and void ab initio. 4/ Should BLM desire, at some future date, to more clearly specify which claims are partially null and void it will be necessary to establish, on the ground, which claims intrude into the patented land. In any event, appellant is clearly forewarned that to the extent his Eureka claims embrace land within the patented Merry Widow and Silver King lodes he can obtain no rights thereto.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions of the Anchorage District Office are affirmed as modified.

James L. Burski
Administrative Judge

We concur:

Gail M. Frazier
Administrative Judge

Bruce R. Harris
Administrative Judge

4/ Placer claims located on lands previously patented without a mineral reservation are necessarily null and void ab initio. See Santa Fe Mining, Inc., 79 IBLA 48 (1984). However, we would further note that recordation filings for such claims are properly "rejected" rather than declared null and void ab initio.